

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-08-IH-0665
)	File No. EB-08-TC-3549
)	
ComSpan Communications Inc.)	NAL/Acct. No. 201032080006
f/k/a Wantel, Inc.)	
)	
		FRN No. 0007799125

ORDER

Adopted: May 24, 2010**Released: May 26, 2010**

By the Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and ComSpan Communications Inc. f/k/a Wantel, Inc. (“ComSpan” or the “Company”). The Consent Decree terminates an investigation by the Bureau against ComSpan for possible violations of sections 9, 254(d), 225, and 251(e)(2) of the Communications Act of 1934, as amended (the “Act”),¹ and sections 1.1157, 52.17, 52.32, 54.706, 54.711, 64.604, and 64.1195 of the Commission’s rules,² concerning the payment of annual regulatory fees; contributions to the Universal Service Fund (“USF”) and Telecommunications Relay Services (“TRS”) Fund; contributions to cost-recovery mechanisms for North American Numbering Plan (“NANP”) and Local Number Portability (“LNP”) administration; and the submission of information as set forth on the Telecommunications Reporting Worksheets (*i.e.*, FCC Forms 499-A and 499-Q). The Consent Decree also terminates an investigation and *Notice of Apparent Liability for Forfeiture* (“NAL”) by the Bureau against ComSpan for possible violations of section 222 of the Act,³ section 64.2009(e) of the Commission’s rules,⁴ and the Commission’s *EPIC CPNI Order*,⁵ regarding ComSpan’s apparent failure to timely file a compliant annual customer proprietary network information (“CPNI”) certification pursuant to section 64.2009(e) of the Commission’s rules.⁶

2. The Bureau and ComSpan have negotiated the terms of a Consent Decree that resolve these matters. A copy of the Consent Decree is attached hereto and incorporated herein by reference.

¹ 47 U.S.C. §§ 159, 225, 251(e)(2), and 254(d).

² 47 C.F.R. §§ 1.1157, 52.17, 52.32, 54.706, 54.711, 64.604, and 64.1195.

³ 47 U.S.C. § 222.

⁴ 47 C.F.R. § 64.2009(e).

⁵ *Implementation of the Telecomms. Act of 1996: Telecomms. Carriers’ Use of Customer Proprietary Network Info. & Other Customer Info.; IP-Enabled Servs.*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927, 6953 (2007) (“*EPIC CPNI Order*”); *aff’d sub nom. Nat’l Cable & Telecomms. Assoc. v. FCC*, 555 F.3d 996 (DC Cir. 2009).

⁶ See *Annual CPNI Certification; Omnibus Notice of Apparent Liability for Forfeiture*, Omnibus Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 2299 (Enforcement Bureau 2009) (“*CPNI Omnibus NAL*”).

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigations.

4. In the absence of material new evidence relating to this matter, we conclude that our investigations raise no substantial or material questions of fact as to whether ComSpan possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Act,⁷ and sections 0.111 and 0.311 of the Commission's rules,⁸ the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigations **ARE TERMINATED**.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by certified mail, return receipt requested, to Mr. Jimmy Byrd, Chief Executive Officer, ComSpan Communications Inc., 6405 Mira Mesa Boulevard, Suite 100, San Diego, California, 92121.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

⁷ 47 U.S.C. § 154(i).

⁸ 47 C.F.R. §§ 0.111, 0.311.

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ComSpan Communications Inc.)	NAL/Acct. No. 201032080006
f/k/a Wantel, Inc.)	
)	FRN No. 0007799125

CONSENT DECREE

1. The Enforcement Bureau (“Bureau”) and ComSpan Communications Inc. f/k/a Wantel, Inc. (“ComSpan” or the “Company”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether the Company violated sections 9, 254(d), 225, and 251(e)(2) of the Communications Act of 1934, as amended (the “Act”),¹ and sections 1.1157, 52.17, 52.32, 54.706, 54.711, 64.604, and 64.1195 of the Commission’s rules,² concerning the payment of annual regulatory fees; contributions to the Universal Service Fund (“USF”) and Telecommunications Relay Services (“TRS”) Fund; contributions to cost-recovery mechanisms for North American Numbering Plan (“NANP”) and Local Number Portability (“LNP”) administration; and the submission of information as set forth on the Telecommunications Reporting Worksheets (*i.e.*, FCC Forms 499-A and 499-Q). The Bureau and ComSpan also enter into this Consent Decree for the purpose of terminating the Bureau’s investigation and *Notice of Apparent Liability for Forfeiture* (“NAL”) by the Bureau against ComSpan for possible violations of section 222 of the Act,³ section 64.2009(e) of the Commission’s rules,⁴ and the Commission’s *EPIC CPNI Order*,⁵ regarding ComSpan’s apparent failure to timely file a compliant annual customer proprietary network information (“CPNI”) certification.⁶

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:

- (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*

¹ 47 U.S.C. §§ 159, 225, 251(e)(2), and 254(d).

² 47 C.F.R. §§ 1.1157, 52.17, 52.32, 54.706, 54.711, 64.604, and 64.1195.

³ 47 U.S.C. § 222.

⁴ 47 C.F.R. § 64.2009(e).

⁵ *Implementation of the Telecomms. Act of 1996: Telecomms. Carriers’ Use of Customer Proprietary Network Info. & Other Customer Info.; IP-Enabled Servs.*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927, 6953 (2007) (“*EPIC CPNI Order*”); *aff’d sub nom. Nat’l Cable & Telecomms. Assoc. v. FCC*, 555 F.3d 996 (DC Cir. 2009).

⁶ *See Annual CPNI Certification; Omnibus Notice of Apparent Liability for Forfeiture*, Omnibus Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 2299 (Enforcement Bureau 2009) (“*CPNI Omnibus NAL*”).

- (b) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
- (c) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
- (d) “CPNI Compliance Plan” means the program described in this Consent Decree at paragraph 17.
- (e) “Effective Date” means the date on which the Commission releases the Adopting Order.
- (f) “Federal Regulatory Reporting and Contribution Compliance Plan” means the program described in this Consent Decree at paragraph 16.
- (g) “Investigations” mean (1) the investigation commenced by the Bureau’s March 13, 2008 letter of inquiry⁷ regarding whether ComSpan violated sections 1.1157, 52.17, 52.32, 54.706, 54.711, 64.604, and 64.1195 of the Commission’s rules, concerning the payment of annual regulatory fees; contributions to the USF and TRS Fund; contributions to cost-recovery mechanisms for NANP and LNP administration; and the submission of information as set forth on the Telecommunications Reporting Worksheets;⁸ and (2) the investigation commenced by the Bureau’s September 5, 2008 letter of inquiry⁹ regarding whether ComSpan violated the requirements of section 222 of the Act, and section 64.2009(e) of the Commission’s rules, by failing to file a compliant CPNI certification.¹⁰
- (h) “ComSpan Communications Inc. f/k/a Wantel, Inc.” or “ComSpan” means ComSpan Communications Inc. f/k/a Wantel, Inc. and its predecessors-in-interest and successors-in-interest.
- (i) “Order” or “Adopting Order” means an Order of the Commission adopting the terms of this Consent Decree without change, addition, deletion, or modification.
- (j) “Parties” means ComSpan Communications Inc. f/k/a Wantel, Inc. and the Bureau.

⁷ See *ComSpan Communications Inc. f/k/a Wantel, Inc.*, EB-08-IH-0665, Letter from Trent B. Harkrader, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission to John Stadter, Chief Executive Officer, Wantel, Inc. (Mar. 13, 2008) (“*March 13, 2008 LOI*”).

⁸ 47 C.F.R. §§ 1.1157, 52.17, 52.32, 54.706, 54.711, 64.604, 64.1195.

⁹ See *ComSpan Communications Inc.*, EB-08-TC-3549, Letter from Marcy Greene, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission to John Stadter, Chief Executive Officer, Wantel, Inc. (Sept. 5, 2008) (“*September 5, 2008 LOI*”).

¹⁰ 47 U.S.C. § 222; 47 C.F.R. 64.2009(e).

- (k) “Rules” means the Commission’s regulations found in Title 47 of the Federal Regulations.

II. BACKGROUND

A. Federal Regulatory Reporting and Contribution Obligations

3. Pursuant to section 254(d) of the Act and sections 54.706 and 54.711 of the Commission’s rules, telecommunications service providers that provide interstate telecommunications services are required to file annual and quarterly Telecommunications Reporting Worksheets (FCC Form 499-A and FCC Form 499-Q) and contribute to the federal USF.¹¹

4. Pursuant to section 251(e) of the Act and sections 52.17 and 52.32 of the Commission’s rules, telecommunications service providers are required to contribute to the costs of establishing numbering administration and local number portability.¹²

5. Pursuant to section 225(b)(1) of the Act and section 64.604 of the Commission’s rules, providers of interstate telecommunications services are required to contribute to the TRS Fund.¹³

6. Pursuant to section 9(a)(1) of the Act and sections 1.1154 and 1.1157 of the Commission’s rules, interstate telecommunications carriers are required to pay regulatory fees.¹⁴

7. ComSpan offers interstate and international telecommunications services and is subject to the requirements discussed in paragraphs 3 through 6 above.

8. On March 13, 2008, the Bureau issued a letter of inquiry (“LOI”) to ComSpan.¹⁵ The *March 13, 2008 LOI* directed ComSpan, among other things, to submit a sworn written response to a series of questions regarding whether ComSpan violated sections 1.1157, 52.17, 52.32, 54.706, 54.711, 64.604, and 64.1195 of the Commission’s rules,¹⁶ concerning the payment of annual regulatory fees; contributions to the USF and TRS Fund; contributions to cost-recovery mechanisms for NANP and LNP administration; and the reporting of information as set forth on the Telecommunications Reporting Worksheets. ComSpan responded to the *March 13, 2008 LOI* on April 1, July 25, August 14, and September 25, 2008.¹⁷ As of the Effective Date, ComSpan has paid all invoiced amounts to the USF,

¹¹ 47 U.S.C. § 254(d); 47 C.F.R. §§ 54.706, 54.711.

¹² 47 U.S.C. § 251(e); 47 C.F.R. §§ 52.17, 52.32.

¹³ 47 U.S.C. § 225(b)(1); 47 C.F.R. § 64.604.

¹⁴ 47 U.S.C. § 9(a)(1); 47 C.F.R. §§ 1.1154, 1.1157.

¹⁵ See *supra* note 7.

¹⁶ 47 C.F.R. §§ 1.1157, 52.17, 52.32, 54.706, 54.711, 64.604, and 64.1195.

¹⁷ See *ComSpan Communications Inc. f/k/a Wantel, Inc.*, EB-08-IH-0665, Letter from Raymond Hazlett, Chief Financial Officer, ComSpan Communications Inc. to David Janas, Special Counsel, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission (Apr. 1, 2008); *ComSpan Communications Inc. f/k/a Wantel, Inc.*, EB-08-IH-0665, Letter from Candice Alderson, Director, Legal Services, ComSpan Communications Inc. to David Janas, Special Counsel, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission (Jul. 25, 2008); *ComSpan Communications Inc. f/k/a Wantel, Inc.*, EB-08-IH-0665, Letter from Al Soreng, Controller, ComSpan Communications Inc. to David Janas, Special Counsel, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission (Aug. 14, 2008);

TRS Fund, cost recovery mechanisms for NANP and LNP administration, and regulatory fees, as well as complied with the regulatory reporting obligations discussed above.

B. CPNI Obligations

9. Section 222 of the Act imposes a duty on telecommunications carriers to protect the confidentiality of their subscribers' proprietary information.¹⁸ The Commission has issued rules implementing section 222 of the Act, and required carriers to establish and maintain a system designed to ensure that carriers adequately protect their subscribers' CPNI.¹⁹ Section 64.2009(e) of the Commission's rules is one such requirement.²⁰

10. In 2006, some companies, known as "data brokers," advertised the availability of records of wireless subscribers' incoming and outgoing telephone calls for a fee.²¹ Data brokers also advertised the availability of certain landline toll calls.²² On April 2, 2007, the Commission strengthened its privacy rules with the release of the *EPIC CPNI Order*,²³ which adopted additional safeguards to protect CPNI

ComSpan Communications Inc. f/k/a Wantel, Inc., EB-08-IH-0665, Letter from Al Soreng, Controller, ComSpan Communications Inc. to David Janas, Special Counsel, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission (Sept. 25, 2008).

¹⁸ Section 222 of the Act, 47 U.S.C § 222, provides as follows: "Every telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunications carriers, equipment manufacturers, and customers, including telecommunication carriers reselling telecommunications services provided by a telecommunications carrier." Prior to the 1996 amendments to the Act, the Commission had established CPNI requirements applicable to the enhanced services operations of AT&T, the Bell Operating Companies ("BOCs"), and GTE, and the customer premises equipment ("CPE") operations of AT&T and the BOCs, in the Computer II, Computer III, GTE Open Network Architecture ("ONA"), and BOC CPE Relief proceedings. *See Implementation of the Telecomms. Act of 1996: Telecomms. Carriers' Use of Customer Proprietary Network Info. & Other Customer Info. & Implementation of Non-Accounting Safeguards of Sections 271 and 272 of the Commc'ns Act of 1934, as Amended*, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061, 8068-70, ¶ 7 (1998) ("CPNI Order") (describing the Commission's privacy protections for confidential customer information in place prior to the 1996 amendments to the Act).

¹⁹ *See CPNI Order*, *supra* note 18; *Implementation of the Telecomms. Act of 1996: Telecomms. Carriers' Use of Customer Proprietary Network Info. & Other Customer Info. & Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Commc'ns Act of 1934, as Amended*, Order on Reconsideration and Petitions for Forbearance, 14 FCC Rcd 14409 (1999); *Implementation of the Telecomms. Act of 1996: Telecomms. Carriers' Use of Customer Proprietary Network Info. & Other Customer Info. & Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Commc'ns Act of 1934, as Amended; 2000 Biennial Regulatory Review -- Review of Policies & Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, Third Report and Order and Third Further Notice of Proposed Rulemaking, 17 FCC Rcd 14860 (2002); *EPIC CPNI Order*, *supra* note 5.

²⁰ 47 C.F.R. 64.2009(e).

²¹ *See, e.g.*, <http://www.epic.org/privacy/iei/> (accessed June 25, 2009).

²² *See id.*

²³ *See supra* note 5. Specifically, pursuant to section 64.2009(e) of the Commission's rules, a telecommunications carrier must have an officer, as an agent of the carrier, sign and file with the Commission a compliance certificate on an annual basis. The officer must state in the certification that he or she has personal knowledge that the company has established operating procedures that are adequate to ensure compliance with the rules in Part 64, Subpart U of the Commission's rules. The carrier must provide a statement accompanying the certification explaining how its operating procedures ensure that it is or is not in compliance with the rules in this subpart. In addition, the carrier

against unauthorized access and disclosure. The *EPIC CPNI Order* was directly responsive to the actions of databrokers, or pretexters, to obtain unauthorized access to CPNI.²⁴

11. On September 5, 2008, the Bureau issued an *LOI* to ComSpan, which directed ComSpan, among other things, to submit a sworn written response to a series of questions regarding whether ComSpan timely filed a CPNI compliance certificate for 2007, which was due by March 1, 2008 pursuant to section 64.2009(e) of the Commission's rules, or an explanation as to why no certification was filed.²⁵ On September 16, 2008, ComSpan submitted a response to the Bureau's *September 5, 2008 LOI*.²⁶ The Bureau concluded that ComSpan failed to submit satisfactory evidence of its timely filing of the annual CPNI compliance certification, and on February 24, 2009, released the *CPNI Omnibus NAL* against numerous companies, including ComSpan, proposing a monetary forfeiture of \$20,000 for ComSpan's apparent failure to comply with section 64.2009(e) of the Commission's rules, and the Commission's *EPIC CPNI Order*.²⁷

III. TERMS OF AGREEMENT

12. **Adopting Order.** The parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

13. **Jurisdiction.** ComSpan agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

14. **Effective Date: Violations.** The parties agree that this Consent Decree shall become effective on the date on which the FCC releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau Order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission Order.

15. **Termination of Investigations.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate its investigations against ComSpan. In consideration for the termination of said investigations, ComSpan agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in these investigations through the Effective Date of the Consent Decree, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own

must include an explanation of any actions taken against data brokers and a summary of all customer complaints received in the past year concerning the unauthorized release of CPNI. This filing must be made annually with the Enforcement Bureau on or before March 1 in EB Docket No. 06-36, for data pertaining to the previous calendar year. 47 C.F.R. § 64.2009(e).

²⁴ *EPIC CPNI Order*, 22 FCC Rcd at 6928.

²⁵ See *supra* note 9.

²⁶ *ComSpan Communications Inc.*, EB-08-TC-3549, Letter from Michelle Elkins, Regulatory Assistant, ComSpan Communications Inc. to Marcy Greene, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission (Sept. 16, 2008).

²⁷ See *CPNI Omnibus NAL*, *supra* note 6; see also 47 C.F.R. § 64.2009(e); *EPIC CPNI Order*, *supra* note 5.

motion against ComSpan concerning the matters that were the subjects of the investigations. The Bureau also agrees that it will not use the facts developed in these investigations through the Effective Date of this Consent Decree, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against ComSpan with respect to ComSpan's basic qualifications, including its character qualifications, to be a Commission licensee or authorized common carrier.

16. **Federal Regulatory Reporting and Contribution Compliance Plan.** For purposes of settling the matters set forth herein, within 30 days of the Effective Date, ComSpan agrees to create and maintain a compliance plan related to future compliance with the Act and the Commission's rules and orders concerning federal regulatory reporting and contribution obligations. The Plan will include, at a minimum, the following components:

- (a) **Compliance Manual.** ComSpan shall create, maintain and update a manual to ensure future compliance with ComSpan's obligations concerning the payment of annual regulatory fees; contributions to the USF and TRS Fund; contributions to cost-recovery mechanisms for NANP and LNP administration; and the submission of information as set forth on the Telecommunications Reporting Worksheets. ComSpan personnel who engage in activities related to federal reporting and contribution requirements will follow the procedures contained in the Compliance Manual. The Compliance Manual will, among other things, describe the rules and requirements as they apply to ComSpan regarding ComSpan's federal regulatory reporting and contribution obligations. The Compliance Manual will set forth a schedule of filing and payment dates associated with annual regulatory fees; contributions to the USF and TRS Fund; contributions to cost-recovery mechanisms for NANP and LNP administration; and the submission of information as set forth on the Telecommunications Reporting Worksheets. ComSpan will create compliance notifications that alert ComSpan personnel to upcoming filing and payment dates. The Compliance Manual will require personnel to contact ComSpan's Designated Contact, and if appropriate regulatory legal counsel, with any questions or concerns that arise with respect to ComSpan's federal regulatory reporting and contribution obligations.
- (b) **Compliance Training Program.** ComSpan will ensure that all personnel who engage in activities related to ComSpan's federal reporting and contribution obligations are appropriately trained and supervised.
- (c) **Designated Contact.** ComSpan designates its Controller as the point of contact for its federal reporting and contribution obligations.
- (d) **Review and Monitoring.** ComSpan will review the Compliance Manual and Compliance Training Program to ensure that they are maintained in the proper manner and continue to address future compliance with ComSpan's obligations concerning the payment of annual regulatory fees; contributions to the USF and TRS Fund; contributions to cost-recovery mechanisms for NANP and LNP administration; and the reporting of information as set forth on the Telecommunications Reporting Worksheets.
- (e) **Audits.** ComSpan will ensure that any internal reviews of the Compliance Plan, if conducted, specifically consider compliance with pertinent federal reporting and contribution obligations.
- (f) **Compliance Reports.** ComSpan will file compliance reports with the Commission ninety days after the Effective Date, twelve months after the Effective Date, and 48 months after the

Effective Date. Each compliance report shall include a compliance certificate from an officer, as an agent of ComSpan, stating that the officer has personal knowledge that ComSpan has established operating procedures intended to ensure compliance with this Consent Decree, together with an accompanying statement explaining the basis for the officer's compliance certification. All compliance reports shall be submitted to Hillary DeNigro, Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington, D.C. 20554. ComSpan must also transmit a copy of the reports via email to hillary.denigro@fcc.gov.

17. **CPNI Compliance Plan.** ComSpan further agrees to take all measures necessary to achieve full compliance with Section 64.2009(e) of the Commission's rules.²⁸ ComSpan agrees to train its personnel regarding when they are and are not authorized to use CPNI. ComSpan further agrees to have an express disciplinary process in place for the unauthorized use of CPNI. Additionally, ComSpan agrees to submit a copy of its annual 64.2009(e) compliance certificate for each of four (4) years following the Effective Date of this Consent Decree to the Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W. Room 4-C244, Washington, D.C. 20554, and must include the file number listed above. ComSpan will also send an electronic copy of its certification to other Telecommunications Consumers Division staff as directed by the Division Chief.

18. **Termination Date.** Unless stated otherwise, the requirements of the Federal Regulatory Reporting and Contribution Compliance Plan and Consent Decree will expire 48 months after the Effective Date. The requirements of the CPNI Compliance Plan will expire 48 months after the Effective Date or upon the termination of the certification requirement set forth in sections 64.2009(e) of the Commission's rules, whichever is earlier.

19. **Section 208 Complaints: Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to section 208 of the Act against ComSpan or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by ComSpan of the Act, the rules, or the Order.

20. **Voluntary Contribution.** ComSpan agrees that it will make a voluntary contribution to the United States Treasury in the amount of \$200,000 in 48 monthly installments of \$4,166.67. The first payment will be made within 10 days after the Effective Date of the Adopting Order, with subsequent payments made by the 15th day of each subsequent month for 47 months. The payment must be made by check or similar instrument, payable to the Order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to the Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 270000001. ComSpan will also send electronic notification on the date said payment is made to david.janas@fcc.gov.

²⁸ 47 C.F.R. § 64.2009(e).

21. **Waivers.** ComSpan waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree, provided the Commission issues an Order adopting the Consent Decree without change, addition, modification, or deletion. ComSpan shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither ComSpan nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and ComSpan shall waive any statutory right to a trial *de novo*. ComSpan hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act,²⁹ relating to the matters addressed in this Consent Decree.

22. **Subsequent Rule or Order.** The parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which ComSpan does not expressly consent) that provision will be superseded by such Commission rule or order.

23. **Successors and Assigns.** ComSpan agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

24. **Final Settlement.** The parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the parties. The parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Commission's rules and orders.

25. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both parties.

26. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

27. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

28. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

²⁹ 5 U.S.C. § 504; 47 C.F.R. Part 1, Subpart K.

P. Michele Ellison
Chief
Enforcement Bureau

Date

Jimmy Byrd
Chief Executive Officer
ComSpan Communications Inc.

Date